

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

IBEW HEALTH & WELFARE TRUST ) CASE NO. C04-0953-MAT  
FUND, et al., )  
Plaintiffs, )  
v. ) ORDER SETTING AMOUNT OF  
ALLSTATE ELECTRIC, INC., a Washington ) DAMAGES DUE PLAINTIFFS  
Corporation, )  
Defendant. )

The Court previously granted the motion for summary judgment plaintiffs Local 191 I.B.E.W. Health & Welfare Trust Fund, Local 191 Money Purchase Plan, National Electric Benefit Fund, Labor Management Cooperation Committee Fund, and District 9 Pension Plan (“the Trusts” or plaintiffs) filed seeking delinquent trust contributions, liquidated damages, interest, costs, and attorney’s fees due by defendant Allstate Electric, Inc. under a collective bargaining agreement. (Dkt. 40.) In so doing, the Court found the Trusts entitled to contributions and any associated damages sought for the time period through August 31, 2003 pursuant to the Employee Retirement Income Security Act (“ERISA”) of 1974. See 29 U.S.C. § 1132(g)(2) (providing specific mandatory remedies for delinquent contributions, including, in addition to the unpaid contributions, liquidated damages, interest, attorney’s fees, and costs). However, because the audit information provided by plaintiffs exceeded the time period found applicable by the Court

01 in its order granting summary judgment, the Court required a revised audit and declaration of  
 02 amounts due the Trusts.

03 The Trusts complied with the Court's order through the submission of declarations and  
 04 exhibits attached to its pending motion for an order setting an amount of damages and an award  
 05 of attorney's fees and costs. (Dkt. 41.) A declaration and auditor's report concludes that  
 06 defendant owes \$14,420.72 in contributions, \$1156.79 in liquidated damages, \$3054.28 in interest,  
 07 and \$3020.79 in accounting/auditing fees. (*Id.*) A declaration from Mark E. Smith asserts  
 08 reasonable attorney's fees in the amounts of \$7025.50, a \$150.00 filing fee, and \$52.00 in service  
 09 fees. (*Id.*) The total sought by plaintiffs amounts to \$28,880.08.

10 Defendant submitted a responsive declaration arguing that, because the Court awarded  
 11 only a portion of the damages sought by plaintiffs, plaintiffs could not be deemed the prevailing  
 12 party for the purposes of an award of attorney's fees, and were similarly not entitled to an award  
 13 of liquidated damages and accounting fees associated with that disputed amount of damages.  
 14 (Dkt. 42.) Defendant further argues that its successful defense against the total amount of  
 15 damages sought entitles it to an award of attorney's fees. (*Id.*)

16 However, ERISA provides specific *mandatory* remedies for delinquent contributions,  
 17 including, in addition to the unpaid contributions, liquidated damages, interest, attorney's fees, and  
 18 costs. *See* 29 U.S.C. § 1132(g)(2). Defendant fails to demonstrate that the amount of attorney's  
 19 fees, liquidated damages, or accounting fees sought are inappropriate in light of the time period  
 20 for which the Court found defendant responsible for unpaid contributions. The Court also notes  
 21 that, while plaintiffs did seek a greater amount of damages than that ultimately awarded, they  
 22 presented two separate arguments, one of which corresponded with the Court's ultimate  
 23 conclusion. (*See* Dkts. 26 and 40.) Moreover, defendant fails to provide any support for its  
 24 contention that, as an employer found delinquent in making contributions to an ERISA trust fund,  
 25 it is entitled to an award of attorney's fees.

26 Having reviewed all documents submitted in support and in opposition to plaintiffs' motion

01 for an order setting the amount of damages and an award of attorney's fees and costs, the Court  
02 finds the amounts sought reasonable under the circumstances. As such, plaintiff's motion (Dkt.  
03 41) is hereby GRANTED and plaintiffs are awarded damages in the amount of \$28,880.08.

04 DATED this 23rd day of August, 2005.

05   
06 Mary Alice Theiler  
07 United States Magistrate Judge

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